

**Passaic River Superfund Community Advisory Group Monthly Meeting
Thursday, January 8, 2015
Meeting Summary**

FINAL

NYU Study

The NYU Medical School is submitting an application to NIEHS, looking to conduct biomedical research on toxins from the Passaic, and there is a portion of the study that will focus on community health and public participation. The CAG met with principals from NYU in December and provided perspectives on the communities surrounding the Passaic River, particularly with regard to fish consumption. NYU will be doing more outreach along the Passaic, if you are interested in working with the project, NYU representatives would be happy to talk to you. In addition, Baykeeper will use the TAG grant technical consultant to review any technical issues, as appropriate.

State of New Jersey Passaic River Lawsuit Settlement

This was discussed briefly at the November 2014 meeting, and the State agreed that it would be helpful to have an attorney to come and talk about the specifics of the agreement. Michael Gordon, local counsel to the State provided an overview.

EPA is the lead on the Superfund cleanup, and the State litigation did not change that relationship. The State filed the case in December 2005. The State was seeking money for the following items:

- To ensure that, if the remedy was publicly funded, the state would not have to use taxpayer money to fund its 10% share. (Note that at the current time, no remedial action has been selected or is underway for the Passaic River, so that the State has not had to provide this 10% cost share).
- To recover funds that the State had already expended on cleanup studies and activities, estimated at \$100 million in investigations of to the point of the lawsuit.
- To recover lost tax revenue due to contamination.
- An additional item was also added during the lawsuit to provide funds for restoration activities.

Three different settlements were established with different groups. All of the above goals were met. The total recovery of \$355 million was allocated within the settlement as follows:

- \$100 million to pay back past costs,
- \$35 million to pay experts and the costs of litigation,
- \$135 million for lost tax revenue, and
- \$67 million was earmarked for restoration.

In addition, Occidental and others have agreed to reimburse the 10% state share up to \$400 million if a publicly funded cleanup should happen. This is not currently anticipated and may not happen but the state felt it was important to have this guarantee.

Public question: Did municipalities get any money back in this settlement? That was not part of the State lawsuit or resulting agreement.

Public question Local governments have paid out quite a bit, what will happen with that? Maxus and Tierra brought the municipalities in as 3rd party defendants. The State did not sue the municipalities, and worked to help settle them out of the lawsuit at \$90,000 each which has indemnified them from future lawsuits under state laws.

Public question Has anyone in the legislature talked about giving that money back to the municipalities? No, there has been discussion of how to use the money, but this has not been part of that discussion.

CAG Question: How many attorneys were involved? On the state side, 5-8 primary attorneys. There were over 270 third parties brought into the suit by Maxus and Tierra, which all had their own attorneys as well. There were groups that had shared counsel and an overall Special Master was appointed.

CAG Question: How was the tax revenue lost amount of \$140 million determined? It was negotiated. This was the first time that the State has ever done this. It is a difficult claim and is rarely done. The spill act has a provision that it will pay one year of lost tax revenue. Identifying the value of this loss is a judgment. The State hired an expert but the claim was negotiated before the expert report was completed.

CAG Question: What is the logic of lost tax revenue? The adverse economic impact of contaminated sites. It depresses the economy in that area, reduces tax revenue, and depresses property values.

CAG Question: Did the settlement delineate the amounts that would be apportioned to different items? Yes, the costs of litigation, past costs of cleanup were all detailed by the State, the economic damage component was not calculated but negotiated, \$67 million for restoration is in addition to other Natural Resource Damages (NRD) required under Superfund.

CAG Question: Is part of the requirement to use \$17 million to do an NRD assessment? No, these monies are to be used for the communities, the State will work with other trustees to do the study, this money does not impact the ability to go after future NRD settlements. The State NRD representative has been talking with the public and will be willing to come back to the CAG as he moves forward on this. The Corps also hopes to use some of this money as a match for some of

the actions it is pursuing under the 53 restoration opportunities it is exploring. They have asked the DEP about working with them.

CAG Question: Is this restoration money that can be spent now? The settlement agreement makes it clear that this is money to be used now in the Newark Bay Complex, not to wait for the NRD process.

CAG Question: Congressman Pascrell was dismayed that a lot of this money was not going to cleanup, was that fair? His impression was that this money should be used for cleanup, but in reality that funding is already in place and the state is protected from any future cleanup liability. Therefore, the State does not have to pay these costs. This is the largest settlement that DEP has ever achieved, it is a significant settlement.

CAG Question: Is there a role for the public to help in deciding how this restoration money can be used for NRD? Yes.

CAG Question: The responsiveness summary notes that it intends to use the restoration money primarily to address lost human access to the river, is that the case? The \$67 million will be reserved by court order to focus on restoration, it cannot be used in any other way.

CAG Question: Can it be spent for flood control projects? Do not think so.

The CAG will work with the State to schedule a meeting with the right folks to discuss the NRD money and possible projects.

Second Supplemental Sediment Sampling Program

Stephanie Vaughn from the EPA provided a presentation on the supplemental data results for the upper portion of the 17 mile study area above River Mile 8.

From 2008 to 2013, 4 to 5 sediment sampling events were conducted along the study area. Surface sediment was tested at approximately 400 total locations, and deeper samples were tested at many of these locations. Sediment from some cores was saved to test later if needed.

This Second Supplemental Sampling Program (SSP2) was performed to obtain more density of sampling above RM8, and EPA now has about 200 sampling locations above and below RM8. This provides a good understanding of the conditions above RM8.

These samples and locations do not count the sampling that was done to delineate the removal action at RM10.9

Locations were selected at places where elevated levels of contamination might exist. Did look at mudflats that had similar characteristics to RM 10.9 but this sampling was aimed at filling data gaps, not on conducting a hot spot investigation.

Stephanie showed and discussed graphs identifying surface sediment results for 2,3,7,8 TCDD (Dioxin). Most locations were close to zero, however there are a number of elevated results as well. The full presentation will be posted at ourpassaic.org.

The FFS identified 10 ppt as the action level for dioxin. From RM8 to RM 14 the average concentration is in the neighborhood of 500 ppt. Above RM 14, the level of contamination decreases markedly with almost all results below 1 ppt. it is very sandy and rocky at the higher areas of the river, and it is hard to get good samples. The detection limit is less than 1 ppt.

At RM 8.5. EPA noticed an area with elevated levels, as well as at RM 10 and we are now looking at these areas more closely. An area just north of 10.9 also has elevations but EPA feels this area is well delineated.

EPA is still reviewing the data, and not ready to make any conclusions.

CAG Question: This winter there was a boat out at 10.9, what was it doing? We are probing to determine the depth of the buried water pipe.

CAG Question: Did the CPG analyze the data? No, they submitted the data report, but EPA wants to wait until they have all the data and look at it all at once. EPA is reviewing the data now and should be finished in a few months. Nothing jumps out at us as needing immediate attention. We did do sampling at the points of human access.

CAG Comment: It would be good to have this analysis for presentation at our March meeting, to show exactly where on the river the elevated levels are located so that we can compare them to the areas used by boat clubs and human access.

Public Comment: The Mayor of Wallington noted that there is an extensive mudflat in front of the High School in Wallington, and he is concerned about the debris that washes up at low tide when lot of the river bottom is exposed. When dredging stopped in the 1960s that is when the flooding started.

CAG Action: The CAG will identify a few locations where they would like to understand levels of contamination in more detail.

CAG Question: What is going on with the Phase 2 removal project? Tierra submitted a work plan to sample in that area. The agreement specifies

disposal in a CDF, but due to opposition encountered during the Proposed Plan public meetings against a CAD or CDF, EPA is looking to better define exactly what will need to be dealt with in the Phase 2 area. The sampling plan will be presented at the March CAG meeting.

CAG meeting schedule and activities for 2015

The CAG approved its 2015 schedule as follows:

March 12, 2015

- Deeper delve into the supplemental sampling data
- Bioremediation study overview
- Sampling plan for Phase 2 removal
- Discussion of the SRA stakeholder analysis

May 14, 2015

- Presentation from the State on spending of the restoration monies from the lawsuit, discussion of public priorities for issues, possible projects and locations.

July 9, 2015

- Topics TBD

September 10, 2015

- Topics TBD

November 12, 2015

- Topics TBD

Other CAG Updates

EPA is still evaluating comments on the proposed plan, and is not projecting a specific month for a decision. The ROD and response to comments will come out at the same time. Currently looking at late 2015.

A new CAG representative from the City of Newark will replace Chris Caceres, her name is Marci Depinia. Stephanie Greenwood no longer Newark's sustainability coordinator, Damon is still the waterfront coordinator.

The SRA Stakeholder analysis report was produced. David will share with the CAG.

Seton Hall Law School is conducting a seminar on the Passaic River this spring, The CAG will forward details if folks are interested.